

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MATTHEW J. ROACH,

Plaintiff,

vs.

**9:13-CV-866
(TJM/DJS)**

DEPUTY OKUN, et al.,

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

This *pro se* civil action, brought pursuant to 42 U.S.C. § 1983, alleges Defendants violated Plaintiff's constitutional rights while he was incarcerated. The matter was referred to the Hon. Daniel J. Stewart, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

The Report-Recommendation, dated June 6, 2017, recommends that Defendant Deputy Okun be granted summary judgment on Plaintiff's excessive force claim and Defendant Stratton be granted summary judgment on Plaintiff's claim alleging lack of notice before he was placed in special housing. The Magistrate Judge recommended, however, that Defendants' motion be denied with respect to Plaintiff's due process claim raised in connection with his disciplinary hearing.

Plaintiff filed objections to the Report-Recommendation. See *dk.* # 133. When

objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the issues raised in the Plaintiff's objections, the Court has determined to accept and adopt the recommendation of Magistrate Judge Stewart for the reasons stated in the Report-Recommendation.

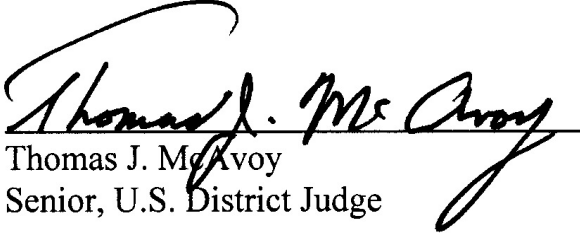
Therefore, the Plaintiffs' objections to the Report-Recommendation of Magistrate Judge Stewart, dkt. # 133, are hereby **OVERRULED**. The Report-Recommendation, dkt. # 127, is hereby **ADOPTED**, and:

Defendants' motion for summary judgment, dkt. # 38, is hereby **GRANTED** in part and **DENIED** in part, as follows:

1. The motion is GRANTED with respect to Plaintiff's excessive force claim against Defendant Okun, and Defendant Okun is hereby DISMISSED as a defendant in this action;
2. The motion is GRANTED with respect to Plaintiff's claim against Defendant Stratton based upon lack of notice for placement in special housing; and
3. The motion is DENIED with respect to Plaintiff's claim of denial of due process in connection with his disciplinary hearing.

IT IS SO ORDERED.

Dated: August 23, 2017


Thomas J. McAvoy
Senior, U.S. District Judge